

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2115 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 5554 of 2008
Along with
Interlocutory Application No.9306 of 2015

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Dinesh Ram, son of late Churaman Ram, Resident of Village - Aruhi, P.O. - Panjar,
P.S. - Karaghar, District - Rohtas.

.... Petitioner-Appellant/s

Versus

1. The Union of India through Home Secretary, North Block, New Delhi.
2. The Director General, Border Security Force, Ministry of Home Affairs,
Government of India, New Delhi.
3. D.I.G./Chief Law Officer (D & L), Directorate General, Border Security Force,
2nd Floor, Block No. 10, C.G.O. Complex, New Delhi.
4. Deputy Inspector General, SHQ, BSF, Malda.
5. Commandant, 57th Battalion, BSF, Patiram, West Bengal.

.... Respondents-Respondent/s

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Appearance :

For the Appellant : Mr. Sanjeet Kumar, Advocate

For the Respondents :

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 30-08-2016

Re.: Interlocutory Application No.9306 of 2015

The application is for condonation of delay of 4 days in
filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that
sufficient cause is made out for condonation of delay. Consequently,
we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.2115 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 29th of January, 2015 whereby the writ application filed by the appellant challenging the order of dismissal passed by the Commandant, 57th Battalion, Border Security Force (For short, 'BSF') on 16th of July, 2007 and the order in appeal affirming the order of dismissal by the Director General, BSF on 26th of November, 2007 remained unsuccessful.

The appellant at the relevant time was In-charge of Kote (some kind of armoury) as Non-Commissioned Officer. In a checking made, a sum of Rs.50,100/- was found from the bag of the constable Kulwinder Singh, the associate of the petitioner. There was a direction to search the barrack, including Kote, and a sum of Rs.53,440/- was found concealed in the old register. On the basis of possession of Rs.53,440, the appellant and Kulwinder Singh were charge-sheeted for misconduct on 11th June, 2007 under Section 46 of the Border Security Force Act, 1968. The appellant was given liberty to take assistance of an officer who would defend him during the enquiry and also granted liberty to produce the defence witness, if any. One Anil Chaudhary, Assistant Commandant, was nominated as defence friend of the appellant. As per the record, it was found that the appellant along with defence friend participated and the charges were found proved against

him. The order of punishment was then passed. The appeal also was dismissed.

One of the issues which arose before the learned Single Bench was of the lack of territorial jurisdiction of this Court, but since the matter remained pending for some time before this Court, the Court has rightly not decided the issue of jurisdiction. On merits, the Court found that while exercising the power of judicial review, the Court does act as an appellate Court. The Court has to see whether fair treatment has been given to the employee during the enquiry proceedings. It was found that the appellant was In-charge of the Kote and money was kept secretly in an old register. Therefore, the appellant has been rightly dealt with by the disciplinary authority and in appeal.

Learned counsel for the appellant argued that there is no finding that the appellant had kept money in the old register. Therefore, the order of dismissal is not tenable.

Though the argument raised is one to re-appreciate the evidence led which this Court while exercising the power of judicial review is not inclined, but even after appreciating the allegations against the appellant, we find no merit in the argument raised. The appellant was In-charge of Kote at the relevant time. The money was found from the Kote which was under the control of the appellant. It is

an unauthorized act to conceal money in the old register. Therefore, even on re-appreciation of evidence, we find no illegality in the order of punishment against the appellant.

Consequently, the Letters Patent Appeal is dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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